UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JOSH EVANS, Plaintiff, v. AQSEPTENCE GROUP, et al, Defendants.	Case No.: 1:17-mc-0023 - DAD - JLT ORDER CONSTRUING PLAINTIFF'S REQUEST FOR LEAVE TO WITHDRAW THE ACTION AS A REQUEST FOR VOLUNTARY DISMISSAL UNDER RULE 41 (Doc. 5) ORDER DIRECTING THE CLERK TO CLOSE THE ACTION

On May 1, 2017, the Court reviewed the documents filed in this action, and noted that it appeared Mr. Evans was seeking to enforce an agreement between other parties. (Doc. 4) The Court ordered Mr. Evans "to file an amended document addressing the claims presented, relief sought, his standing, and the Court's jurisdiction within fourteen days of the date of service." (*Id.* at 3)

In response, Mr. Evans filed a request for "leave to withdraw the previously submitted action… so that the *parties in fact* can re-file their case in the proper court after adequate research and preparation…" (Doc. 5 at 1) The Court construes this request for withdrawal as a request for voluntary dismissal pursuant to Rule 41 of the Federal Rules of Civil Procedure, under which "the plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment . . ." Fed. R. Civ. P. 41(a)(1)(A).

Significantly, once such a notice has been filed, an order of the Court is not required to make the dismissal effective. Fed. R. Civ. P. 41(a)(1)(ii); *Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir. 1997). Based upon the foregoing, the Clerk of Court is **DIRECTED** to close this action in light of the request of withdrawal filed and properly signed pursuant to Rule 41(a).

IT IS SO ORDERED.

Dated: **May 17, 2017**

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE